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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID: ED-2013-OESE-0062; CFDA Number: 84.215T]

Final Priority and Requirements; Education Facilities
Clearinghouse

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Final priority and requirements.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces a priority and requirements under the Education Facilities Clearinghouse (EFC) program and may use one or more of the priority and requirements for competitions in fiscal year (FY) 2013 and later years. Through this action, we intend to support the collection and dissemination of best practices for the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities. Specifically, this priority and requirements will support the establishment of a clearinghouse to help stakeholders recognize the linkages between the school facility and three areas: academic instruction, student and community well-being, and school fiscal health.

EFFECTIVE DATE: These priority and requirements are effective [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Pat Rattler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E254, Washington, DC 20202. Telephone: (202) 453-6718 or by email: Pat.Rattler@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Education Facilities Clearinghouse program is to provide technical assistance and training on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities.

Program Authority: 20 U.S.C. 7131; 7243-7243b.

We published a notice of proposed priority and requirements in the Federal Register on May 9, 2013 (78 FR 27129). That notice contained background information and our reasons for proposing the particular priority and requirements.

Public Comment: In response to our invitation in the notice of proposed priority and requirements, four parties submitted comments on the proposed priority and requirements. We group major issues according to subject. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority and requirements since publication of the notice of proposed priority and requirements follows.

Comment: One commenter expressed concerns about whether the initiatives proposed in the priority and requirements could be maintained or lead to change on a long-term basis. The commenter also suggested that other variables affecting student achievement, such as inequality of funding or the effect of the community on the school, should be addressed in the priority and requirements.

Discussion: We believe that the proposal to award a grant under this program for multiple years will help sustain the effort to support the collection and dissemination of best practices for the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities. By providing support to help

increase the capacity of States and local educational agencies (LEAs), the priority will help support long-term change in these specific areas by increasing the knowledge and skills that education providers have to support effective improvements to their facilities. We provide funding and support through other programs, such as Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (Title I) to help meet the additional needs of disadvantaged students and to support parent and community engagement. For example, Title I targets more than \$13.7 billion in resources to LEAs and schools with high numbers or percentages of children from low-income families to provide additional services that improve the teaching and learning of educationally at-risk children to help ensure they meet State academic standards. In order to receive Title I funds, LEAs are required under ESEA to ensure that their Title I schools, which tend to be those with the highest poverty levels, receive resources from local and State sources that are comparable to those received by non-Title I schools.

Changes: None.

Comment: Several commenters recommended we specify in the notice of final priority and requirements the designations

of the priority as absolute, competitive preference, or invitational.

Discussion: We appreciate these recommendations and have considered them in developing the notice inviting applications for the fiscal year 2013 EFC competition. However, specifying a priority as absolute, competitive preference, or invitational in a notice of final priority commits the Department to using the priority that way in all future competitions. In order to preserve our ability to use this priority as needed and to better serve States and LEAs, we are not specifying in this notice of final priority and requirements whether the priority is absolute, competitive preference, or invitational. We do so in the notice inviting applications for the 2013 competition, published elsewhere in this issue of the Federal Register.

Changes: None.

Comment: One commenter recommended that we add specific qualifications that a successful applicant funded under the EFC program should have beyond the educational sector, namely expertise in recognizing and disseminating information about specific definitions of high-performance buildings identified in the Energy Independence and Security Act, securing connections to relevant professional societies and other key stakeholders, executing a complex

outreach and engagement program, managing a robust Web site, and influencing decision makers.

Discussion: We appreciate the importance of the EFC provider having expertise in specific areas; however, we decline to require more specific qualifications that an applicant must meet in order to be eligible for funding. Because the EFC will have to disseminate information on a range of facilities topics, we do not want to limit specific areas in which the grantee must have knowledge. In addition, some of the qualifications recommended by the commenter, namely the ability to execute outreach and engagement programs and manage a Web site, may be evaluated through selection criteria for this program. Finally, the purpose of the EFC is to disseminate information on facilities and provide assistance to facilities managers; and specifically influencing decision makers is beyond the scope of this program.

Changes: None.

Comment: One commenter stated that the EFC should provide balanced information on best practices for school safety and security and school facilities. The commenter emphasized that it is important for school staff to be able to make informed choices about school facilities.

Discussion: In the notice of proposed priority and requirements, we included a requirement that an applicant for the EFC grant must have a plan to track and compile research and best practices, as well as develop resources that support safe, healthy, and high-performing school facilities. In addition, this grant will be a cooperative agreement, which will allow us to work with the grantee to ensure that the resources presented are supported by evidence, comprehensive, and balanced. These resources will help support education stakeholders in making informed decisions about improvements to school facilities.

Changes: None.

Comment: One commenter recommended that we establish an absolute priority requiring the grantee to collect and disseminate information on Green Schools. The commenter indicated that having an absolute priority would help ensure alignment between the ED-Green Ribbon Schools program and the EFC program and maximize the use of limited resources.

Discussion: We agree that providing information to support the maintenance and creation of Green Schools is important, and we envision that Green Building may be one area in which the EFC may provide technical assistance, training, and products. However, there are numerous organizations

that provide information to support the adoption of green practices in schools. Since this information is already provided by many organizations and because we have limited funds to provide support for improving educational facilities, we do not believe that including a priority on Green Schools would be the most effective use of these funds.

Changes: None.

Comment: One commenter recommended that we expand the work of the EFC to include both collecting and analyzing data about the state of elementary and secondary school facilities and publishing these analyses so that they can inform research on the relationship between school facilities and school quality.

Discussion: We understand that there is a need for data to support additional research on the effect of school facilities on a number of elements related to student learning; however, the central purpose of the EFC grant is to provide technical assistance and training on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of elementary and secondary school facilities. Toward this end, the EFC may provide links to appropriate collections of this information, or develop briefs summarizing what research

and statistics currently exist. However, with limited funds, we cannot support original data collection and analysis, especially if the collection and analysis are duplicative of what currently exists.

Changes: None.

Comment: One commenter expressed support for the important balance between student safety and creating a learning environment that supports trust and collaboration. The commenter recommended that we include language to support this balance in the priority.

Discussion: We appreciate the importance of the EFC provider understanding the various aspects of, and the links between, the school's physical environment and the creation of a learning environment that supports safety and nurtures trust and collaboration. We believe that we have included language that supports the balance between student safety and creating a learning environment that supports trust and collaboration. Specifically, through the priority and requirements, we have included specifications that the EFC should disseminate research and best practices. We consider facilities that serve to keep students secure, while supporting a nurturing environment, to be an example of best practice.

Changes: None.

Comment: One commenter recommended that the Web site created by the EFC should include tools to facilitate interaction between site visitors. The commenter specifically recommended using blogs or forums to support interaction.

Discussion: We envision that the Web site created by the EFC grantee may support a number of resources and services to encourage interaction between site visitors. However, we do not want to be overly prescriptive about the specific functions of the Web site, which would inhibit applicant flexibility to propose and build a site that fulfills the goals of the EFC.

Changes: None.

Comment: A few commenters expressed concern over the training requirements for the EFC grantee. One commenter recommended that the requirement to provide trainings be changed to an invitational priority so that the grantee could focus on resource collection and dissemination. This commenter also pointed out that an entity that is highly skilled at collecting and disseminating information on school facilities may not be very skilled at providing technical assistance and training. Other commenters stated that by holding only two trainings per year, the EFC grantee would not be able to provide services to a large

number of schools that need assistance with their facilities. One commenter recommended that the trainings occur more than twice a year, be open to all stakeholders, and include a follow-up component to ensure that trainees can effectively implement the practices they learned.

Discussion: We believe that training is an important component of the EFC grant because it is essential that the resources collected and disseminated by the EFC also have practical application. Providing training helps ensure that the resources selected by the EFC support the work of school administrators and should be a mandatory component of a project. Therefore, we decline to change requirement 3 to an invitational priority.

Although requirement 3 states that the EFC grantee must conduct a minimum of two trainings per year, this does not limit the grantee to this minimum. With regard to the comment about the training audience, we recognize that training could be a very valuable tool for all education stakeholders; however, this grant program provides a limited amount of funding and likely cannot support training for potentially thousands of education stakeholders. We believe that the most effective use of resources is to focus training on those individuals in

leadership positions who can use their training to effect change for a large number of schools.

Finally, while we recognize that follow-up activities would be valuable to support the lessons taught at the training sessions, we do not want to be too prescriptive about the specific structure of these trainings. Detailed requirements for training provided by the EFC will be established in the EFC's cooperative agreement with the Department.

Changes: None.

FINAL PRIORITY:

Establishment of the Clearinghouse.

Establish a Clearinghouse to collect and disseminate research and other information on effective practices regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools in order to--

(a) Help education stakeholders increase their use of education facilities to turn around low-performing schools and close academic achievement gaps;

(b) Increase understanding of how education facilities affect community health and safety and student achievement;

(c) Identify potential cost-saving opportunities through procurement, energy efficiency, and preventative maintenance;

(d) Increase the use of education facilities and outdoor spaces as instructional tools and community centers (e.g., outdoor classrooms, school gardens, school-based health centers); and

(e) Increase capacity to identify hazards and conduct vulnerability assessments, and, through facility design, increase safety against hazards, natural disasters, and intruders.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34

CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

FINAL REQUIREMENTS:

The Assistant Secretary for Elementary and Secondary Education announces the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Requirement 1--Establish and Maintain a Web Site.

An applicant must include in its application a plan to establish and maintain a dedicated, easily-accessible Web site that will include electronic resources (e.g., links to published articles and research) about the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools. The Web site must be established within 120 days of receipt of the award and must be maintained for the duration of the project.

Requirement 2--Track and Compile Best Practices and Develop Resource Materials.

An applicant must include in its application a plan to track and compile best practices at the State, LEA, and school levels and a plan to develop resources that support the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools.

Requirement 3--Training.

An applicant must include in its application a plan to develop and conduct at least two training programs per year for individuals in leadership positions (such as business or operations managers) in elementary or secondary schools or LEAs, who are responsible for the construction and or maintenance of elementary and secondary education facilities. Training topics must include information on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities in order to improve the capacity of elementary and secondary schools or LEAs to make quality decisions regarding safe, healthy, and high-performing elementary and secondary education facilities. Training must be conducted upon request by the Department, elementary and secondary

schools, States, or LEAs, and must be conducted by appropriate Clearinghouse staff or contractors.

Requirement 4--Technical Assistance.

An applicant must include in its application a plan to provide technical assistance, including a plan for providing on-site technical assistance to elementary schools, secondary schools, or LEAs, about issues related to the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. The technical assistance may be provided in the form of electronic or telephone assistance when requested by these schools, LEAs, or the Department. On-site technical assistance visits will be conducted upon request by, or based on input from, the Department, elementary schools, secondary schools, or LEAs and must be completed using appropriate Clearinghouse staff or contractors. The Department must approve in advance all technical assistance visits.

The technical assistance must consist of consultation regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. Specific technical assistance topics may include information related to: assessing facilities and construction plans for energy efficiency; conducting

vulnerability assessments; and developing written plans to retrofit education facilities to address identified hazards and security concerns. Technical assistance may also address low-cost measures that can be taken to enhance the safety and security of schools.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority or one or more of these requirements, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs

(recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may

include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority and these requirements, only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have determined, also, that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part

79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Dated: July 8, 2013

Deborah S. Delisle,
Assistant Secretary for Elementary
and Secondary Education.

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